

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

Antonio Montero,

Petitioner,

v.

Bureau of Immigration & Custom  
Enforcement,

Respondent.

C/A: 9:22-cv-885-SAL-MHC

**ORDER**

Pro se Petitioner Antonio Montero (“Petitioner”), a federal inmate currently incarcerated at Federal Correctional Institution Williamsburg, has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241. [ECF Nos. 1, 28.] On April 21, 2023, Respondent Bureau of Immigration and Custom Enforcement (“ICE”) filed a motion to dismiss to dismiss this action for lack of jurisdiction. [ECF No. 34.]

This matter is before the court on the Report and Recommendation (the “Report”) issued by United States Magistrate Judge Holly H. Cherry, made in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.), recommending ICE’s motion to dismiss be denied. [ECF No. 41.] In the Report, the magistrate judge explains that, based on the evidence and argument currently before the court, Petitioner has met his burden of demonstrating this court has subject matter jurisdiction. *Id.* Attached to the Report was a notice advising the parties of the procedures and requirements for filing objections to the Report and the consequences if they failed to do so. *Id.* at 9. Respondent requested and received an extension of time to file objections to the Report. [ECF Nos. 43, 44.] The deadline to file objections was extended to July 19, 2023. [ECF No. 44.] Respondent has not filed any objections.

The magistrate judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The court is charged with making a *de novo* determination of only those portions of the Report that have been specifically objected to, and the court may accept, reject, or modify the Report, in whole or in part. 28 U.S.C. § 636(b)(1). In the absence of objections, the court is not required to provide an explanation for adopting the Report and must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (citing Fed. R. Civ. P. 72 advisory committee’s note).

After reviewing the Report, the applicable law, and the record of this case in accordance with the above standard, the court finds no clear error, adopts the Report, ECF No. 41, and incorporates the Report by reference herein. As a result, Respondent’s motion to dismiss, ECF No. 34, is **DENIED**. This matter remains referred to the magistrate judge for pretrial matters.

**IT IS SO ORDERED.**

September 26, 2023  
Columbia, South Carolina

  
Sherri A. Lydon  
United States District Judge